or devised subject to the payment of his debts, is made assets to be administered in Equity, for the payment of both simple contract and specialty debts, reserving to creditors by specialty in which the heira are creditors by specialty in which the hoirs are bound, the same priority which they originally possessed. And now, by the law of England, legal assets, for the payment of the debts of the deceased, are defined to be "those portions of the property of the deceased in which his Executor or heir may gain possession, and in respect whereof, he may be made chargeable, by the process of the ordinary tribunals, and without the necessity of equitable interference—and they consist, first, of the personal estate to which the Executor or Administrator is entitled by virtue of his office; and, secondly, of the real estate descended or devised, except where the devise is for the payment of the

of assets, where those of both kinds are administrators of assets, where those of both kinds are administed to must have reference to the condition of mitted to be equally liable for debts, without regard to the condition of each other. See authorities cited in note to 2 Wms. Exors. 1526, 1532.

The alteration of the rule in England preceded on the just policy to make the whole of a man's property, of which he died seized and possessed, liable to the payment of his debts, because such a rule was not consonant to principles of honesty and justice. And, for the same reason, this policy has been very generally, if not universally, adopted in the States of this Union. Characellor Kent anys—that "the rule prevails generally, in all cases, with the personal estate in the time of the hearing that was intended to control the action of the Court.

The language of these various provisions appears to look to the condition of the estate at the time of the application to sell the lands on that groun and that the creditor's remedy was by action on the Administrator's bond. does not appear that the Administrator as it was, in the disc course of administration of the sureties on his bord were insolvent, as all the states on his bord were insolvent, as all the account of the court.

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will be the personnel extended or devised, except, where the devise is for the payment of the debts. Adams Eq., 282, 283. And Mr. Jaman and the devise is for the payment of the debts. Adams Eq., 282, 283. And Mr. Jaman and the devise is for the payment of the debts. Adams Eq., 282, 283. And Mr. Jaman and the devise is for the payment of the debts. Adams Eq., 282, 283. And Mr. Jaman and the devise is for the payment of the devise is for the payment of the devise is for the devise is for the devise is for the payment of debts. Adams Eq., 282, 283. And Mr. Jaman and the devise is for the devise is for

THE DAILY CLARION

DECISIONS OF THE HIGH CURT

OF

ERRORS AND APPEALS,

OCTOBER TERM, 1806.

Robert K. Frank, by Gancilan, }

E. S. Franker, E. Return

C. S. Arrand, decased, from a decree

of the Court

This is an appeal, by the hear at law or is

Samuel W. Strans, decased, for the pays

The is in a popula, by the hear at law or is

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But the question here presented is, whether rights of the heir at law, and of the creditors of the estate of the testator.

It is insisted, in behalf of the appellant, if the personality beauficient, at the time of the testator that the real estate of the testator descended immediately on his death, to the heir who was entitled to had it subject to a considious subsequent, that the real estate of the testator descended immediately on his death, to the heir who was entitled to had it subject to a considious subsequent, that it should be necessary to pay the testators debits which recessify sould be necessary to pay the testators debits which recessify sould be not to the testators are sort to the real estate for that purpose, through the Executor and in the contact at the fine of his for that purpose, that it should be had to the descend, subject to that the real estate in the form of the testators and that no supervening insufficiency, resulting from any cause whatever, could render the real estate liable for the debts.

The earbstness with which these views have been urged by eminent counsel, has induced us to give them more consideration than we supposed they deserved.

The earbstness with which these views have been urged by eminent counsel, has induced us to give them more consideration than we supposed they deserved.

The earbstness with which recessed person for the payment of his debts.

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The subject to common law, all the p

are insufficient to pay the debts. This charge is affixed to the lands, by law, at the time of the testator's death, though it may not be enforced until the deficiency of the personalty be ascertained; and the heir holds the legal title, in the interim, subject to this charge, whenever it shall be made to appear that the necessity for enforcing it has arisen. It is a case of a charge on the hands, and not that of a title held on condition subsequent.

Again—it is contended, that the deficiency must exist at the time of the death of the deceased, in order to make the real estate chargeable; and that the question of the sufficiency of the personal assets must be tested by their condition at the time of his death.

We do not think that the statutes will admit of this construction for several reasons.

It is not consistent with their phraseol-

tration, resisted the application to sell, on the ground that the original Administrator had neglected to administer certain person-al property and to apply it to the payment of the debts, in consequence of which the estate had become insolvent. It was held, that, if the personal estate had become in-sufficient in consequence of the devestant or neglect of duty of the Administrator, the heir at law could successfully resist the ap-plication to sell the lands on that ground; and that the creditor's remedy was by an action on the Administrator's bond. It does not appear that the Administrator and the sureties on his bond were insolvent, and nothing is said as to the rights of the par-ties in that contingency.

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